IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

CHARTERED ACCOUNTANT REFEREBCE NO. 2 OF 1988

Dr. M.P. Desarda, of Pune,
Indian Inhabitant, having his
office at Desarda Nursing Home,
Opp. Deccan Gymkhana,
Pune-411004. .. Petitioner

v/s.

Shri M.B.Bafna, F.C.A., of Pune,
Indian Inhabitant, M/s. Bafna & Co.,
Chartered Accountants, 245,
Narayan Peth, Laxmi Road,
Chopra Mansion, Pune-411030. .. Respondent

Dr. Virendra Tulzapurkar with Ms. S. Srikrishna
i/by M/s. Kanga & Co. for petitioner.

None for respondent.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 5th August, 2004

ORAL JUDGMENT (Per R.M.Lodha, J.)

Heard Dr. Virendra Tulzapurkar, the learned senior counsel for the Council of the Institute of Chartered Accountants of India.

2. Shri M.B.Bafna, FCA (respondent herein) was charged of the professional misconduct of providing false information to the income-tax officer to misguide him and demanding substantial amount in cash over and above the professional fees for finalisation of the complainant Dr. M.B.Desarda's income-tax case. The charge was based on the

complaint dated 6th March, 1982 filed by Dr. M.B.Desarda with the Council of the Institute of Chartered Accountants of India. Alongwith the complaint, the complainant forwarded a cassette tape said to contain the conversation between the complainant Dr. M.P.Desarda and the respondent Shri M.B.Bafna. After holding the enquiry, the disciplinary committee submitted the report recording therein its opinion that the respondent was guilty of "other misconduct" within the meaning of section 22 read with section 21(1) of the Chartered Accountants Act, 1949. The report of the disciplinary committee was placed before the Council of the Institute of Chartered Accountants of India. The report of the disciplinary committee was supplied to both, the complainant as well as the respondent. The Council concurred with the opinion of the disciplinary authority that the respondent was guilty of "other misconduct" within the meaning of section 22 read with section 21(1) of the Chartered Accountants Act, 1949 and accordingly, recommended to this court that the name of the respondent be removed from the register of members for a period of one month.

3. We carefully examined the entire record available with us.

4. The complaint is founded on the cassette tape

said to be containing the conversation between the complainant and the delinquent. Even the examination of the complainant as well as the concerned ITO Shri Khedkar is broadly based on the said cassette tape. We are constrained to observe that though the disciplinary committee observed at various places in its report about the evidence that emerged before it in the course of hearing but as a matter of fact we find that the consideration of the matter including the oral evidence by the disciplinary committee is based on the cassette tape. The entire consideration of the matter by the disciplinary committee in paragraphs 25 to 35 of its report submitted to the council virtually falls flat on the ground in the light of its observations made in paragraph 24 of the report. In paragraph 24 of the report, the disciplinary committee recorded that it was difficult in deciphering fully the tape recorded conversation and further difficult in recognising clearly the voice of the parties. If that be so, then the cassette tape was worthless material and served no purpose, not even for the purposes of corroboration. As already indicated by us, though the disciplinary committee observed that it has proceeded on the basis of the oral evidence of the parties but on consideration of the report, we find that the disciplinary committee even while considering the oral evidence was influenced by the

cassette tape and the veracity of the oral evidence was also tested on the touchstone of the cassette tape when the disciplinary committee itself was not sure about the voices in the tape and was not able to decipher fully the tape recorded conversation.

5. In the circumstances, it is not necessary to deal with the matter at length as, in our considered view, the finding recorded by the disciplinary authority holding the complainant guilty of the 'other professional misconduct' under section 22 read with section 21(1) of the Chartered Accountants Act, 1949 is not held to be based on legal evidence.

6. The Council in a very perfunctory manner concurred with the view of the disciplinary committee and recommended to this court that the name of the respondent be removed from the register of members for a period of one month. Such perfunctory recommendation of the Council cannot be accepted nor can finding of disciplinary authority holding the delinquent guilty of other misconduct under section 22 read with section 21(1) which is based on no legal evidence be accepted.

7. We, accordingly, direct the proceedings to be filed.

No costs.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)